IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6351 of 1988

WITH

SPECIAL CIVIL APPLICATIONS NO.6353 OF 1988

NO.6359 OF 1988, NO. 6360 OF 1988

NO. 6364 OF 1988 AND NO.6365 OF 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES : YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy of the judgement? NO : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO : NO

5. Whether it is to be circulated to the Civil Judge? NO : NO

GUJ.CO.OP.OIL SEEDS GROWERS' FEDERATION LIMITED

Versus

AGRICULTURAL PRODUCE MARKET COMMITTEE

Appearance:

MR MANOJ N POPAT for Petitioner

M/S KG VAKHARIA, TUSHAR MEHTA, KALPESH S. ZAVERI, B.S. JOSHI for respective APMCs

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CORAM : MR.JUSTICE J.M.PANCHAL
Date of decision: 11/02/2000

ORAL COMMON JUDGEMENT

1. In these petitions which are filed under Articles 226 and 227 of the Constitution, the Gujarat Cooperative Oilseeds Growers' Federation Ltd. [`GROFED' for short], has questioned levy and collection of fees by different Agricultural Produce Market Committees in the State on oilseeds received by it for processing and marketing at appropriate price.

2. The Gujarat Cooperative Oilseeds Growers' Federation Ltd. is registered as State Level Federation. It was established to implement Oil Projects sponsored by Government of India and Government of Gujarat. According to the petitioner, the petitioner has got its own processing facilities at various places in Gujarat and all the members of Primary Oilseeds Societies give their products to the primary societies with a request to forward the agricultural produce namely, oilseeds to GROFED on their behalf for processing and marketing at appropriate price. What is claimed by the petitioner is that it in turn pays fixed amount as advance to the farmers and after processing the agricultural produce, converts it into oil and deoiled cakes. The petitioner claims that the converted material is sold to dealers and the petitioner pays to the farmers the difference on the basis of total realisation from sale of converted material after deducting the administrative expenses. This system, according to the petitioner, is called pooling wherein no purchase or sale of agricultural produce takes place and therefore, the Agricultural Produce Market Committees are not entitled to levy fees. It is averred by the petitioner that whenever goods for which the pooling takes place are sold and ownership transferred, the Agricultural Produce Market Committees may be entitled to levy the fees, but as there is no element of purchase or sale in pooling, the Agricultural Produce Market Committees are not entitled to claim fees. The petitioner has mentioned that the agricultural produce is neither bought nor sold in the market area in case of pooling and therefore, the provisions of Rule 48 of the Gujarat Agricultural Produce Market Rules, 1965 cannot be invoked or pressed into service by the Market Committees for the purpose of levying fees. It is also asserted by the petitioner that concept of advance payment to the members of primary societies establishes that neither purchase nor sale takes place when the goods are handed over to GROFED and therefore, levy of fees by different Agricultural Produce Market Committees is not

only illegal, but also ultra vires. The petitioner has emphasized that, contrary to the underlying object for which GROFED was established, the Agricultural Produce Market Committees are levying and collecting fees which is illegal and therefore, the Committees should be restrained from levying fees. Under the circumstances, the GROFED has filed above numbered petitions and prayed to issue a writ of mandamus or any other writ, direction or order to restrain the Agricultural Produce Market Committees from levying market fees or cess from the petitioner on the transaction of pooling and from taking any coercive steps for recovery of fees.

3. The Agricultural Produce Market Committees impleaded as respondents have not filed any reply affidavit, because, according to the learned counsel appearing for the Committees, the question involved in the present petitions turns upon the interpretation of explanation appended to Rule 48[1] of the Gujarat Agricultural Produce Market Rules, 1965.

4. Mr. M.N.Popat, learned counsel for the petitioner contended that the pamphlet produced by the petitioner to show as to how the system of pooling works, indicates that all the members of the primary oilseeds societies give their agricultural produce to the societies with a request to forward the agricultural produce to GROFED on their behalf for processing and marketing at appropriate price and as neither sale nor purchase of the agricultural produce takes place, the Agricultural Produce Market Committees are not entitled to levy fees. It was claimed that the GROFED after processing the agriculture produce and converting it into oil and deoiled cakes, sells the same on behalf of the farmers to dealers and farmers who are members of the primary oilseeds societies are paid the amount as advance which indicates that neither purchase nor sale of the agricultural produce takes place and therefore, the Agricultural Produce Market Committees have no right to claim market fees. Learned counsel for the common petitioner stressed that the system of pooling does not involve any sale or purchase of agricultural produce as contemplated by provision of section 28 of the Gujarat Agricultural Produce Markets Act, 1963 [`the Act' for short], read with the provisions of Rule 48 of the Gujarat Agricultural Produce Market Rules, 1965 [`the Rules', for short] and as the levy of tax is illegal and ultra vires, the petitions should be accepted.

4. M/s M.K.Vakharia, Tushar Mehta, Kalpesh S. Zaveri and B.S.Joshi, learned counsel appearing for the

Agricultural Produce Market Committees vehemently pleaded that the pamphlet produced by the GROFED itself establishes that the agricultural produce received by it is being weighed by it before processing and marketing at appropriate price and as weighing of agricultural produce is a deemed sale within the meaning of Explanation appended to Rule 48 [1] of the Rules, the different Market Committees are entitled to levy and collect fees. It was also submitted that even in case of pooling, the Committees are entitled to levy the fees in view of the provisions of section 28 of the Act read with Rule 48 of the Rules and therefore, the petitions should be dismissed. What was asserted by the learned counsel for the respondents was that the levy and collection of fees is neither illegal nor ultra vires and therefore, the petitioner is not entitled to the reliefs claimed in the petitions.

5. I have heard the learned counsel for the parties and taken into consideration the contentions urged at the bar. Section 28 of the Act enables a Market Committee subject to the provisions of the Rules, to collect fees on the agricultural produce brought or sold in the market area. The Market Committee has to prescribe the fee subject to a maximum to be laid down by the Government under the rules and the Government has to keep in view the purposes of the Act in laying down the maximum in the Rules because the rule making powers could be exercised by the Government only for the purpose of carrying out the provisions of the Act. The services to be rendered and the facilities to be provided by the Market Committee extend throughout the notified market area without being confined to the market yards and therefore, levy of fees on sale or purchase of an agricultural produce is never regarded as ultra vires. The Government has made Rules known as the Gujarat Agricultural Produce Markets Rules, 1965. Rule 48, which deals with Fees Levy and Collection, reads as under :-

48. Market fees -

[1] The market committee shall levy and collect fees on agricultural produce bought or sold in the market area at such rate as may be specified in the bye-laws subject to the following minima or maxima viz.

[1] rates when levied ad valorem shall not be less than [15 paise]

and shall not exceed 40 paise per hundred rupees.

[2] rates when levied in respect of cattle, sheep or goat shall not be less than 10 paise per animal and shall not exceed Rs.2 per animal.

Explanation - For the purposes of this rule a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for the purpose of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person in a place outside the market area.

[2] No fees shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area or for export and, in respect of which declaration has been made and a certificate has been obtained in Form V.

Provided that if such agricultural produce brought into the market area for export is not exported or removed therefrom before the expiry of twenty days from the date on which it was so brought, the market committee shall levy and collect fees on such agricultural produce from the person bringing the produce into the market area at such rates as may be specified in the bye-laws subject to the maxima and minima specified in sub-rule [1] :

Provided that no fee shall be payable on a sale or purchase to which sub-section [3] of section 6 applies.

6. A bare reading of the above quoted Rule and more particularly, the Explanation makes it manifest that for the purposes of this Rule, a sale of agricultural produce is deemed to have taken place in a market area, if it has been weighed or measured or surveyed for the purpose of

sale notwithstanding the fact that the property in agricultural produce has by reason of such sale passed to a person in a place outside the market area. The deeming provision is intended to enlarge the meaning of word `sale' and to include sales which otherwise may or may not fall within the main provisions of the Rule. By now it is well settled that a deeming provision should be extended to the consequences and incidents which would inevitably follow if full effect is given to the deeming provision. There is no reason why deeming provision made in the Explanation to Rule 48[1] of the Rules should in law be not carried to its logical end to achieve the desired result. Therefore, it will have to be held that if an agricultural produce is weighed in a market area, sale of it takes place in terms of Explanation to Rule 48[1] of the Rules and such a sale is subject to levy of market fees.

7. As stated earlier, the petitioner has produced pamphlet indicating as to how the pooling system undertaken by it works. The system adopted by GROFED is that the quantity of mustard seed sent by the member of a primary oil-seeds growers' society through said society is received by GROFED at its godown situated within market area and after removing impurities / wastage from oil-seeds, the remaining quantity is weighed at plant of GROFED as per formula mentioned in clauses 6 and 9 of the pamphlet and thereafter, the quantity of oil-seeds is processed. Clause 12 of the pamphlet provides that any dispute regarding weight, percentage of moisture, quality of mustard seeds, price etc. will be referred to officer on special duty and his decision would be binding on the parties. On internal page 9 of the said pamphlet, proforma of standard agreements to be entered into between the member of a primary oilseeds growers society with primary society and a primary society with GROFED are provided. The agreement which is required to be entered into by a member of the primary society with the primary society indicates that the member hands over his agricultural produce to the primary society and authorises the primary society to handover the said agricultural produce in turn to GROFED on his behalf for the purpose of ascertaining weight, wastage, moisture and quality of oil before it is converted into oil or deoiled cakes for the purpose of sale to the dealers within or outside the area of market committee. The different clauses of the pamphlet and agreement to be entered into establish that the agricultural produce received by GROFED from primary oilseeds growers' society is weighed by the GROFED and therefore, in terms of the deeming provision contained in the Explanation appended to Rule

48[1] of the Rules, a sale takes place notwithstanding the fact that the property in the agricultural produce may pass by reason of such sale to a person in a place outside the market area. Though in the petitions it is asserted that purchase and sale of the agricultural produce as postulated by Explanation to Rule 48[1] does not take place and property in goods does not pass to the petitioner, the petitioner has not made any mention about weighing, measuring or surveying being done by it with reference to the agricultural produce received by it. It is not the case of the petitioner that the agricultural produce received by it is not being weighed by it at all. Taking over-all view of the matter, it will have to be held that the agricultural produce received is being weighed by the GROFED and therefore, sale of agricultural produce as contemplated by the deeming provision contained in the Explanation to Rule 48[1] does take place.

8. As held by the Division Bench of this court in case of Fulabhai Govindbhai v/s The Kaira District Tobacco Market Committee and another reported in 12 GLR 71, Explanation appended to Rule 48[1] is not ultra vires, rule making powers of the Act as it is merely a safeguard against the possible evasion of the regulatory provisions of the agricultural produce. In view of the fact that the GROFED weighs the agricultural produce received by it from different primary oilseeds growers' societies in market area of the Agricultural Produce Market Committee concerned, a sale takes place within the meaning of Explanation to rule 48 of the Rules, and therefore, the Market Committees are entitled to levy and collect the fees. Thus, the levy and collection of fees cannot be regarded at all either as ultra vires or not authorised by law. Section 28 of the Act empowers the Market Committee to levy and collect fees on the agricultural produce brought or sold in the market area and as sale of oilseeds received by the GROFED from primary oilseeds growers' societies takes place, the petitioner is not entitled to the reliefs claimed in the petition. The petitions therefore cannot be allowed and are liable to be dismissed.

9. For the foregoing reasons, all the petitions fail and are dismissed. Rule is discharged in each petition with no orders as to costs.

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